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Book C 5 T 17

MEMORIAL OF ANDREW TAYLOR,

TO THE

HON. EDWARD HARDIN AND BENJAMIN H. BREWSTER,

Commissioners under the Cherokee Treaty of 1835, now in session in Washington city,

For the value of his pre-emption right to 160 acres of land, on which he resided at the date of the treaty, in Bradley county, Tennessee, where Cleveland now stands; which, under the 12th article of the treaty, he had a right to locate at the minimum Congress price of \$1.25 per acre, which article is in the following words: "Those *individuals and families of the Cherokee nation that are averse to a removal to the Cherokee country west of the Mississippi, and are desirous to become citizens of the States where they reside*, and such as are qualified to take care of themselves and their property, shall be entitled to *receive their due portion of all the personal benefits accruing under this treaty*, for their claims, improvements, and per capita, as soon as an appropriation is made for this treaty."

"Such heads of Cherokee families as are desirous to reside within the States of North Carolina, Tennessee, and Alabama, subject to the laws of the same, and who are qualified or *calculated to become useful citizens*, shall be entitled, on the *certificate of the Commissioners*, to a *pre-emption right to one hundred and sixty acres of land*, or one-quarter section, at the minimum Congress price, so as to include the *paesent buildings or improvements of those who now reside there*."

"It is stipulated and agreed between the United States and the Cherokee people, that John Ross, James Starr, George Hicks, John Gunter, George Chambers, John Ridge, Elias Boudinot, George Saunders, John Martin, William Rogers, Roman Nose, Situate, and John Timson, shall be a committee on the part of the Cherokees to recommend such persons for the privilege of pre-emption rights as may be entitled to the same under the above articles."

Under this provision of the treaty, your memorialist would have been entitled to a grant for 160 acres of land located at the place he owned improvements and resided at the date of the treaty, had not an amendment been made to the treaty which commuted his right to land for money to be in lieu of the land.

"Art. 1. It is therefore agreed that all the pre-emption rights and reservations provided for in articles twelve and thirteen shall be, and the same are hereby, relinquished and declared void."

"Art. 3. It is therefore agreed that the sum of six hundred thousand dollars shall be, and the same is hereby, allowed to the Cherokee people, to include the expense of their removal, and all

claims of every nature and description against the Government of the United States not herein otherwise expressly provided for, and to be in lieu of the said reservations and pre-emptions."

The undersigned, as you will perceive in the certificate annexed, (marked A,) on the 16th day of February, 1837, made application to the committee appointed under the 12th article to recommend him and his family to the Commissioners acting under the authority of that and the 17th article as "being qualified or calculated to become useful citizens;" which recommendation was obtained and filed with the Commissioners, and was by them approved, and their certificate annexed thereto on the 14th of May, 1838. Also annexed, (marked B,) is the plat and certificate of survey of 160 acres of land, including his dwelling-house and improvement, where he resided at the date of the treaty.

Annexed, (marked C,) deposition of Messrs. Baldwin Harle and Alex. A. Clingan, (certified to be respectable citizens,) who prove that they were acquainted with your petitioner prior to and at the date of the treaty of 1835; that he was the head of an Indian family, and occupied the land, described in the plat annexed, at the date of the treaty, which was selected by the State for a county seat, and on which the village of Cleveland now stands. This is followed by the annexed deposition of Messrs. P. J. G. Lea and James Berry, (marked D,) who are certified to be respectable persons by statement of Hon. Spencer Jarnagin, (marked E;) and are the same who acted as Commissioners of the State in locating the town of Cleveland, on the quarter section occupied by Andrew Taylor, prior to and at the date of the treaty; which quarter section they prove to have been worth, at the date of the treaty, without the improvements, \$40 per acre—\$6,400; deduct the minimum Congress price, (\$1.25 per acre—\$200,) would leave the pre-emption right to land, commuted for money, worth \$6,200, on which your memorialist requests a decree to be entered in his favor, and, at the proper time, a certificate on the Treasury of the United States to be issued therefor.

Respectfully submitted.

ANDREW TAYLOR.

DECEMBER 14, 1846.

A.

Certificate of citizenship for Andrew Taylor.

I certify, that on the 16th day of February, 1837, Andrew Taylor, a white man, having Cherokee rights, was recommended by the committee to the United States Commissioners as capable of becoming a citizen of the United States, and that his name stands on the records of the committee.

L. ROGERS,

Secretary to Committee.

N. P. W. 16 Feb. '19

COMMISSIONERS' OFFICE, *May 14, 1838.*

I certify that the recommendation of the committee for the above-mentioned Andrew Taylor was reported by the committee to the Commissioners, and is on file in the Commissioners' office.

JNO. C. MULLOY,
Secretary to Commissioners.

Approved, May 14, 1838:

TH. W. WILSON,
One of the Commissioners.
JAMES LIDDELL,
Commissioner.

B.



No magt. var. allowed.

Scale of 20 chs. per inch.

STATE OF TENNESSEE, *Bradley county:*

The above plate represents the southwest quarter of section twenty-seven, in township two, range one west, in the Oco-ee dis-

trict, in said State, containing one hundred and sixty acres, formerly occupied by Andrew Taylor.

Given under my hand, the 26th July, 1843.

JOHN C. KENNEDY,
Late Deputy Surveyor General of the Oco-ee district, Tenn.

C.

Deposition of B. Harle and A. A. Clingan.

STATE OF TENNESSEE, *Bradley county :*

This day came before me, James Mitchell, an acting Justice of the Peace in and for said county, Baldwin Harle, forty-eight years of age, and Alexander A. Clingan, forty-two years of age, both respectable citizens of said county, and, being duly sworn, say : that they are well acquainted with Andrew Taylor, and with the southwest quarter of section twenty-seven, in township two, range one west of the basis line, in the Oco-ee district, and that the said Taylor was in the actual possession of and resident upon the said quarter section of land at and before the treaty of 1835-'6, and up to the time of the action of the legislation of said State which disposed of said quarter section to said county, for the use of the town of Cleveland, and that the same was afterwards sold for several thousand dollars, and the said Taylor was thereby dispossessed and denied the right of entry on said quarter ; and he, the said Taylor, was the head of an Indian family, and that the town of Cleveland now stands on the identical same quarter section of land.

BALDWIN HARLE.

ALEXANDER A. CLINGAN.

Sworn to and subscribed before me, this 20th day of July, 1843.

JAMES MITCHELL,
Justice of the Peace.

D.

Deposition of P. J. G. Lea and James Berry.

STATE OF TENNESSEE, *Bradley county :*

This day came before me, James Mitchell, an acting Justice of the Peace in and for said county, P. J. G. Lea, aged about thirty-five years, and James Berry, aged about fifty-two, both respectable citizens of the aforesaid county, and, being duly sworn, say : that they are acquainted with Andrew Taylor and with the southwest quarter of section twenty-seven, township two, range one west of the basis line, in the Oco-ee district, and that this said quarter section of land was taken by act of the Legislature of Tennessee for the use of the town of Cleveland, and that said quarter section of

land was actually entered by the Commissioners of said town, and that we, the said Lea and Berry, compose part of the Board of Commissioners for said town of Cleveland, appointed by the Legislature of this State, and are yet acting Commissioners for said town, and that we would value the land aforesaid at forty dollars per acre, by reason of the town having been located on said quarter section of land at the time the said land was entered by said Commissioners; and, also, it was worth the said forty dollars per acre immediately on and after the passage of the law authorizing the entry of the Oco-ee lands.

P. J. G. LEA.
JAMES BERRY.

Sworn to and subscribed before me, this 25th day of July, 1843.
JAMES MITCHELL,
Justice of the Peace.

STATE OF TENNESSEE, *Bradley county:*

I, John H. Robertson, clerk of the Bradley county court for the county of Bradley aforesaid, do certify that James Mitchell, whose name appears to the foregoing affidavit is an acting justice of the peace for said county. He was duly elected, commissioned, and sworn, and faith and credit is due to his official acts.

Given under my hand, at office in Cleveland, July the 25th, 1843.
J. H. ROBERTSON, *Clerk.*

STATE OF TENNESSEE, *Bradley county:*

I, Robert M. Swan, Chief Presiding Justice for the county of Bradley, aforesaid, do certify that John H. Robertson, whose name appears to the foregoing certificate, is the clerk of the county court for said county, and his certificate appears in due form of law.

Given under my hand and seal, this 26th day of July, 1843.

ROBERT M. SWAN, [L. s.]
Chief Presiding Justice for said County.

E.

WASHINGTON, 9th June, 1844.

DEAR SIR: Your note of yesterday has been received, requesting me to state whether I am not acquainted with Dr. Pleasant J. G. Lea and James Berry, Esq., of the town of Cleveland, Bradley county, Tennessee, and what I know of the intelligence, judgment, and veracity of those gentlemen.

I have known both of them long and intimately, and I take pleasure in stating I feel myself honored by their acquaintance and confidence. As to their intelligence, judgment, and veracity, no one can be entitled to higher standing than they possess in the particulars to which you refer. I have myself the utmost confi-

dence in the correctness of any thing either of them would say or do, and this confidence does not rest alone upon my personal knowledge of those gentlemen, but upon the reputation they have among their neighbors and acquaintances.

Yours, &c.,

SPENCER JARNAGIN.

Mr. ANDREW TAYLOR.

[*U. S. Senate.*]

F.—Docket No. 1.

Copy of the proceedings of the Commissioners in the pre-emption claim of Andrew Taylor.

Docket of Messrs. Eaton and Hubley.—Pre-emption claims.

No. 9.	[Examined.] 20th June, 1843. “ Andrew Taylor. “ Appraisement ordered. “ A copy, “ W. D. MILLER, <i>Secretary</i>” [<i>of the Board.</i>]
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Docket of Messrs. Washington and Mason.—Pre-emption claims.

No. 9.	20th June, 1843. “ Andrew Taylor. “ Appraisement ordered. “ Received the papers in the above claim November 25, 1844. “ WM. H. THOMAS. “ A copy, “ D. W. MILLER, <i>Secretary</i>” [<i>of the Board.</i>]
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Entry on Judge Hubley's notes of the proceedings of the Board.

318.	“ Andrew Taylor. “ Pre-emption. “ 22d August, 1843, examined papers and valuation ordered. “ A copy, “ W. D. MILLER, <i>Secretary</i>” [<i>of the Board.</i>]
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ARGUMENT

In support of the accompanying claim of Andrew Taylor, and in reply to the previous opinion of Messrs. Washington and Mason.

ANDREW TAYLOR	}	<i>For a Pre-emption.</i>
vs.		
THE UNITED STATES,		

This case was submitted to the former Commissioners, Messrs. Eaton and Hubley, by whom an examination was had, and an appraisement ordered, as appears by the record. They omitted, however, to place it on the list furnished to the valuing agents; and thus it remained, when replaced on the docket of their successors, Messrs. Washington and Mason.

The undersigned, being subsequently employed in the case, obtained leave to withdraw the papers, for the purpose of examining them, and gave his receipt therefor, dated November 25, 1844.

The late Commissioners, however, proceeded to draw up an opinion, or signed one, which was drawn up for them, on this case, notwithstanding it had already been adjudicated by their predecessors, and the papers were at the time withdrawn from before the Board, by permission granted by themselves. This opinion was entered on the record, as a decree against pre-emptions generally, under date the 26th November, 1844.

As soon as this came to the knowledge of the undersigned, he applied to the Board for a rehearing, which was granted, as appears from the following quotation from the records:

“December 7, 1844. A motion having been made by W. H. Thomas for a reconsideration of the decree averse to pre-emption rights; and his motion is on file, and is granted.” (See Docket No. 1, on file in your office.)

On this state of facts, the case is now submitted to the present Board. The accompanying memorial briefly but fully explains its character.

But there are some positions, taken in the before-mentioned opinion, so peculiar and wholly untenable, that it seems proper to the undersigned to take a short review of them. It would be useless to follow this opinion through all its forward and retrograde movements, its repetitions, misstatements, and contradictions. When sifted, the following are the chief arguments in opposition to the claim:

I. That “a claim could only vest on a full compliance by the pre-emptors with the treaty stipulations of 1835, had they remained in force;” that those stipulations (which were, that the claimants should obtain the certificate of the Commissioners, that they were qualified or calculated to become useful citizens, and pay the minimum Congress price, \$1.25 per acre, for the land) could not be complied with; because, pre-emptions and reservations having

been surrendered by the supplemental article, there existed no tribunal legally authorized to grant such certificates; and that "such certificates were illegal and void, if intended to convey any privilege or right not conceded by the treaty."

It seems to have been forgotten by those who signed this opinion, that the claim now under consideration is not for the land itself, but for the money allowed by the supplemental article in lieu of pre-emption rights, to those to whom said rights were secured by the 12th article of the treaty. It is labored to prove what is not denied or controverted, namely: that no certificates could be granted to entitle the holder to the land itself—when the claim is not for the land, but for the money, which was allowed *in lieu* of the land, or *in consideration* for the rights of pre-emption surrendered. Admitting that such certificates would be of no value, so far as they went to entitle the holder to the land, they were yet legal, good, and valid, so far as they went to designate those who, having been entitled to the land under the 12th article, were entitled to the money allowed by the 3d supplemental article for the land which they were forced to surrender.

It will be freely admitted that "a claim could only vest on a full compliance with the treaty stipulations of 1835, *had they remained in force*." But so far as the payment of the minimum Congress price (\$1.25) is concerned, they *did not* remain in force; and the undersigned is really at a loss to imagine the purpose, object, or bearing of the assertion, that "there is not a shadow of evidence" to show that, in a single instance, any patent for any such land "was ever demanded, or one cent ever tendered to the United States Land Office, or to the States within whose limits the lands were located, in payment of the same." Of course no patent was demanded and no money paid, because the stipulations of the treaty, which permitted and required that, *did not remain in force*; the right to buy land at the minimum Congress price having been surrendered, and a sum of money allowed to those entitled to that privilege, *in lieu thereof*.

II. It is argued that the sum of \$600,000, allowed in the 3d supplemental article "to include the expense of removal and all claims of every nature and description, and to be in lieu of the said reservations and pre-emptions, and of the sum of \$300,000 for spoliations," is too small to admit the presumption that any part was to be paid in lieu of pre-emption rights, though so expressly and positively stated in the treaty; "it being well known that the expense of removal and spoliations far exceeded the whole \$600,000 thus appropriated," in the words of those who signed this opinion. They add, that spoliations and removal should be preferred claims, and that, "if any residue of the sum appropriated was even intended to apply to pre-emption privileges, none such exists, for the fund above mentioned is exhausted."

Here it may be remarked, that in the quotation in the opinion, of "all claims of every nature and description," the important qual-

ification, "not herein otherwise expressly provided for," ought not to have been omitted, if the intention was to make a fair quotation. It must also be remarked, that an important fact seems here to have been either forgotten or purposely overlooked, namely: that by act 12th June, 1838, \$1,047,000 was appropriated, in addition to the above-named sum of \$600,000, to be applied to the objects and purposes specified in the 3d supplemental article. And in reply to this argument of the opinion, the undersigned must quote the next page of the same opinion, where it is asked: "Is it for a moment to be imagined that the Government of the United States, in dealing with a weak tribe of Indians, would tarnish its character for liberality and fair dealing by an act of such injustice?"

The case is this: The Government of the United States, in the opinion, determined to force a weak tribe of Indians, against their will, to make a treaty ceding to it their lands. The Indians insisted that to those of their people who remained in the States and became citizens, the same liberality should be extended as had been shown to other Indian tribes, their neighbors, to whom reservations of 640 acres had been allowed. The United States Commissioner, admitting the force and justice of this demand, proposed, as a compromise, to give to those who remained the same privilege which white citizens of the United States have, to retain a small quantity of land, cultivated and improved by their own labor, on the payment of \$1.25 per acre; which compromise was accepted, and a treaty concluded.

A delegation of the Indians was appointed to accompany the Commissioner to Washington, with instructions to use their best influence with the Red Clay delegation to sign this treaty, and to do what might be necessary to secure its ratification by the Senate. The President, however, and not the Senate, insisted upon a surrender of the pre-emption rights. It is very doubtful, to say the least, whether the delegation had any authority to consent to such surrender. To obtain their consent, however, and make a show of fair dealing, a sum of money was promised to be allowed *in lieu of* and *in consideration for* these rights, which the Indians were forced to surrender, and of other claims. But the sum allowed was insufficient, and the argument is, that "it is therefore to be presumed that it was not the *intention* of the Government of the United States to pay any thing for the surrender of pre-emption rights thus obtained. But if those who signed this opinion be correct in this, then it necessarily appears that the President and Senate of the United States intended to overreach the Indians by naming an insufficient sum. The Indians were forced, at the point of the bayonet, to stand by the surrender, though the *consideration* has failed. The consideration promised, as the opinion argues, is and was intended to be insufficient and a cheat, and the Government of the United States is made to appear to the Indians, to its own citizens, and to the world, in the light of a knavish and fraudulent bankrupt, who, claiming that his assets have been exhausted by

preferred creditors, pleads bankruptcy to avoid payment of what he had promised, while he, or his family holding for him, are still in enjoyment of the land for which payment is claimed.

But the imputation here cast upon the Government of the United States by those who signed this opinion is wholly without foundation; for, by the act of the 12th June, 1838, as before stated, \$1,047,000 was appropriated for the objects and purposes specified under the third supplemental article, part of which is now, or ought to be, in the Treasury.

The third objection to this claim, which indeed seems to be the chief objection, and is argued backwards and forwards throughout the opinion, is, that the money allowed by the third supplemental act was given to the Cherokee nation, and not to any individuals. It would be an unnecessary waste of time to notice all the views taken in support of this position. The absurdity of most of them is apparent. Some are directly contradictory and refute each other. As, for instance, it is argued that "the Cherokee lands were held "by the people of the nation in common, and with them there "were no exclusive or privileged classes, who could claim title to "one acre of land more than the humblest citizen of the nation." Now this, if it has any meaning or application to the question, means that there were *no exclusive or privileged classes*, without reference to the qualification added of "claiming title to more land "than the rest." Yet, in the very next sentence, it is said that "the 12th article was introduced to conciliate the *wealthier* and "*more influential classes* to a sale of the country, which the Government had determined to force upon them." And on the second page following express reference is made to an *exclusive and privileged* class, who have been paid for "improvements abandoned," which payments were made to the *individuals*, and not to the nation.

But the chief argument relied on to prove that this was a national fund is, that it is allowed to the "Cherokee people." Now, if this is so as to that part of the \$600,000 which was to be *in lieu* of pre-emptions and reservations, it also applies to that allowed for removal and all other claims, &c., and to the \$300,000 for spoliations. If so, why were some *individuals* allowed a commutation in money for the expense of their removal, and why were claims for spoliations, &c., allowed and paid to *individuals*, when the whole sum was allowed to the Cherokee people collectively, as a nation, and for a national fund? Will not the Government of the United States, which, if this position be tenable, who has paid to individuals for removals, spoliations, and other claims, a large sum belonging to the nation, be compelled to refund to the nation the amount which it, as trustee, has wrongfully paid to those not entitled to it? But besides that, the practice as to one part of this fund of the same Commissioners who signed this opinion, contradicts the position they now assume as to another part of the same fund. Their position in this matter is otherwise almost too absurd to merit a se-

rious refutation; the more especially as the very words of the 2d article, quoted by them as an explanatory preamble and introduction to the 3d supplemental article, on their very face utterly refute the position taken by those who quote them, as follows:

"That the \$5,000,000 allowed to the Cherokee people for their lands was not intended to include the amount required to remove them, nor the value of certain claims of *many of their people*."

Here the very words quoted by the opinion to prove that the \$600,000 was a national fund, plainly show that it was intended *for many of the people*, and not for the nation.

The argument that, because the surplus left, if any, after payment of the claims of individuals for removal, spoliation, pre-emption, &c. &c., was to be turned over and belong to the education fund, that therefore the whole sum was a national fund, is on a par with the rest. For this very application of the surplus of the small sum so soon exhausted, as alleged by the opinion, proves that the *surplus* only, had any remained, was to be a national fund, and that only after the claims of individuals had been first paid.

Again: The opinion quotes United States Commissioner Schermerhorn, in which, speaking of those Cherokees who were to remain east, he says: "They will have paid to them here all that is due them from their claims, improvements, and per capita allowance, *removal*, and *subsistence*, but they must purchase their own lands like other citizens, and settle where they please, subjects of the laws of the country where they live."

Upon this it is remarked that "there is not one word here said about pre-emption." Ergo, the claim should be rejected.

Now, it must be remembered that Mr. Schermerhorn made two reports:

The first was the proposition of the Government of the United States, which submitted to the Cherokees, in council, convened for the purpose of deciding on the propositions, which they refused to accept. (See report referred to in Senate Doc. 120, page 459.)

In his second report, which accompanied the journal of the negotiation of the treaty, he says the Cherokees insisted on reservations being granted in favor of such of their people as desired to remain in the States; in order to get over this difficulty, and remove their opposition, he had substituted for that class a limited number of pre-emption rights, not to exceed in all four hundred. (See Senate Doc. No. 120, page 513.)

That, subsequently to the first report, it was agreed that pre-emption should be allowed to certain of the Cherokee people, and the treaty so concluded; and that, subsequently again to that, a new arrangement was entered into, and money allowed in lieu of pre-emption, which were surrendered. Now, when these facts are borne in mind, the quotation of Mr. Schermerhorn's first report, in the connexion in which it is used, necessarily strikes the reader with surprise. It is not to be presumed that those who signed that paper could be guilty of intentional injustice or misrepresentation,

or that, if they were aware of the second report, they would quote the first and omit or suppress the second. It is, therefore, to be presumed that this seeming improper quotation of the first and suppression of the second report, like the other errors of this opinion, is rather to be attributed to the facts that those who signed it did not take the trouble to investigate the question, and were sadly ignorant of the material facts of the case upon which they were giving an opinion. But if the omission of the first report to mention pre-emptions is good evidence to prove that the money subsequently allowed in lieu of pre-emptions was only intended by the President and Senate of the United States as a mere bait to cozen the Indians, to whom pre-emption rights were secured by the 12th article of the treaty, into a surrender of those rights, and that the Commissioners, in deciding upon these claims, are to act on such a supposition, his subsequent report is good evidence to prove that pre-emptions were granted in the treaty. At the same time the words of the 3d supplemental article, and the act of 12th June, 1838, show that, although the Government of the United States forced those Cherokees, to whom the treaty granted pre-emptions, to surrender their rights under the treaty, yet, mindful of its high character for justice and fair dealing, a liberal allowance of money was made to that class as a compensation for this surrender of their rights. And if he, who made both reports and concluded the treaty, and was familiar with the whole proceedings, may be deemed a competent exponent of what were the intentions of the parties to this treaty between a great and powerful Government on the one part, and a weak tribe of Indians, who were to be forced to surrender their homes and the graves of their fathers, on the other; or if he may be taken as a proper exponent of what honor and good faith and a decent regard for the character of the President and Senate, who made this treaty, require of the Commissioners appointed to decide justly on these claims, then the undersigned begs to submit his express and positive statements to rebut the inferences improperly drawn from his first report. In a written statement on this subject, speaking of one of this class of claimants, he says: "He is one of the 'heads of a Cherokee family' who, by the 12th article of the treaty, became a citizen of the United States, and "one whom I consider, in virtue of this 12th article and 3d supplemental to it, entitled to a fair compensation for his pre-emption "right to 160 acres of land, and all the personal benefits arising "the treaty." (See statement, in his own handwriting, in the case of David Taylor, on file.)

There is another position taken in this opinion, which is worthy of notice only that from it we may judge of the rest. It is as follows:

"As we have before remarked, when this supplement was "agreed upon, the land had already been ceded to the United "States by the 1st article of the original treaty, which was subsequently ratified by the President and Senate. Not a vestige of

"title remained in Cherokees, collectively or individually. It was exclusively the property of the United States, for whom it was purchased."

From this it would seem that the persons who signed this opinion held that the treaty had full force and effect from the moment of its being signed by the United States Commissioners and the Indian delegates, and before it was submitted to and ratified by the Senate, and signed by the President. It is difficult to reconcile this position with the conclusion to which the opinion finally comes. If the treaty was binding as to part, it was binding as to the whole, and the same instrument which divested the Cherokees, individually and collectively, of every vestige of title to their lands, and made them exclusively the property of the United States, as asserted, gave certain rights of pre-emption to this class of claimants, which became as fully and exclusively their property by a vested title. By what right, therefore, could the President of the United States insist upon a surrender of these rights, or refuse to recognise them? And since, in order to obtain the consent of the delegation to this surrender, it became necessary to promise, and was promised, that money should be given to those whose rights were surrendered, in lieu of those rights, how can this claim be now rejected, unless, indeed, it be upon one of the suppositions of this opinion, to wit: that the sum of money promised was purposely insufficient, a mere shadow and bait held out for the purpose of deceiving a weak tribe of Indians into a sale of their lands, of which the great and magnanimous Government of the United States had determined, by force and fraud, to get possession? It is needless to repeat before this Board that this supposition should be indignantly rejected.

Again: The late Commissioners say:

"But does it come even within the range of probability that the Cherokees, as a nation, would ever have consented that a few hundred fortunate individuals of their tribe, who succeeded in obtaining recommendations from the Indian committee and certificates from the United States Commissioners, should have and exercise a privilege to the exclusion of the nation; and the general fund intended for the benefit of all the people, and which was to be distributed per capita among them after the liquidation of certain claims, should thus, and to so large an amount, be charged on that fund, and be diverted from its general and equitable application."

The undersigned is at a loss to understand the meaning of this very complex sentence. Can it be seriously asked whether the Cherokees could ever have consented to pre-emption rights in favor of those who remained in the States? Does not the treaty, and the report of the Commissioner who made it, directly prove that the Cherokee nation not only consented that "a few hundred fortunate individuals" should enjoy the privilege of pre-emption, but even insisted very strenuously on their being allowed a greater

privilege, to wit: reservations of 640 acres, as was promised by the 8th article of the treaty of 1817, when the remainder should be ceded to the United States, and only consented to reduce their demands to the lesser privilege of pre-emptions as the best compromise that, in their weakness and destitution, they could obtain of the liberality of the Government of the United States.

The last part of the sentence above quoted and the succeeding passages are almost unintelligible. The purport of the latter is to show that pre-emption claims, if admitted, would number one thousand, and amount to \$2,400,000. This estimate is admitted to be extravagant. Its falsity is exposed by the report of the Commissioner, which expressly stated that the number of pre-emptions was not to exceed four hundred. The fact is that they do not number more than about half as many as was contemplated, and less than \$100,000 will cover the whole amount.

But the most surprising objection of the late Commissioners to this claim is, that the claimant is a white man, married to a Cherokee woman, and therefore not entitled to the rights secured to "heads of Cherokee families," under the treaty. This objection is not only at variance with the well-established construction given to the treaty by the Government and by the former Commissioners, but herein the late Commissioners are surprisingly inconsistent with themselves, they having repeatedly recognized the Cherokee character of white men married to Cherokee women, and having allowed and caused to be paid other claims to the present claimant himself, amongst others. But it is needless to pursue this matter further, the present honorable Board having already been called upon to express their disapprobation of the views of the late Commissioners on this point. (See pamphlet of Cherokee laws, page 10, quoted in Wheeler's case.)

Equally surprising is the citation of "the interdictions of the intercourse law," by which, the undersigned supposes, is meant the law of 1834. For it is matter of astonishment that the late Commissioners should be ignorant of repeated decisions by the Government to the effect that that law applied only to the Cherokee country west, and not to the country east. (See letter of C. A. Harris, acting Secretary of War, to General Wool, dated August 13, 1836, in which it is said: "In relation to the confinement or removal of Mr. Jones, or any other white person, I have "to observe that, as the intercourse act of 1834 does not extend to "the Cherokee country, I am not aware of any law authorizing "either measure.")

As to the remark that the claimant, being a white man, "already "had a right to locate on any of the unappropriated public domain, "and become a pre-emptor under the laws of the United States," the undersigned cannot conceive how his rights, as a white citizen, can, with a decent regard to good faith, be permitted to restrict or prejudice his rights as an acknowledged head of a Cherokee family, contemplated by the treaty. Had such a doctrine been

promulgated by the Commissioners sent to make the treaty, no treaty would have been made. And it would be as just now to refuse payment of a pre-emption claim to a full-blooded Cherokee on the ground that, having been made a citizen of the United States by the treaty, he has thereby acquired a right to locate on any of the unappropriated public domain.

But if, by this remark, it is meant that the claimant, as a white man, might have taken a pre-emption to 160 acres of land, on which he lived at the date of the treaty, and which he had cultivated and improved by his labor, it is incorrect. For, under the treaty, as amended by the supplemental act, commuting the pre-emption rights of the Cherokees who remained east into money, the lands were claimed exclusively by the States which passed laws for the sale thereof without pre-emption privileges (at \$1 25) either to white men or Cherokees. And in the case of this claimant particularly, by act of the State of Tennessee, the land which he had settled, cleared, cultivated, or improved, and to which by the 12th article of the treaty he was entitled to a pre-emption, as the head of a Cherokee family, was taken from him and located as a town site for the county seat of Bradley county.

In conclusion, the undersigned must be permitted to say, that he has good reason to believe that this opinion, though signed by the late Commissioners, was in part, if not all, penned for them by Colonel S. C. Stambaugh, the counsel for the Western Cherokees, who asked permission to appear before the late Board, as he has done before the present, in opposition to the claims of the Cherokees east, basing his request upon the ground that he was employed as counsel for the Western Cherokees, and therefore desired to increase their amount by diminishing the sum to be paid east. He therefore proposed to divert from its proper application, and have paid to the Western Cherokees, the sum which was allowed to the Cherokees who remained east, in lieu of pre-emptions. For this reason, the undersigned feels called upon to notice the fact, that Colonel Stambaugh was previously employed and filed written arguments in several claims similar to the present, which were allowed and paid.* These arguments, however, have been abstracted from the files of the Board; had they not been so abstracted, the arguments of Colonel Stambaugh, both *pro* and *con*, would have been before the Board, and this long review of his later efforts might have been unnecessary.

The proceedings had on this claim by Messrs. Eaton and Hub-

* See claims on file in your office, viz :

Gideon F. Morris, (white man,) book F, page	-	-	-	-	-	12
David Taylor, (white man,) do.	-	-	-	-	-	23
Waeheecha, (or Grasshopper,) do.	-	-	-	-	-	31
Nancy Catatahe, do.	-	-	-	-	-	32
Lucy Teseskec, do.	-	-	-	-	-	39

In which Colonel Stambaugh and Judge Bryan acted as counsel for the claimants, and received ten per cent. each for their services on the sums allowed.

ley are contained in paper marked F, referred to, which shows that the claim has already been examined and ordered to be valued, and the last Board having left this case where they found it, the present Commissioners are requested to enter a decree *nunc pro-tunc*, unless it be determined to commence *denovo* on all the claims that have been examined by your predecessors. The papers withdrawn by me in this case on the 24th of November, 1844, are herewith returned, and respectfully submitted for your consideration and decision thereon.

Respectfully submitted.

WM. H. THOMAS,
Attorney for Claimants East.

DECEMBER 14, 1846.

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